

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SELVIN LABORIEL,

Plaintiff,

-v.-

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

18 Civ. 5294 (KPF)

**OPINION AND ORDER
ADOPTING REPORT AND
RECOMMENDATION**

KATHERINE POLK FAILLA, District Judge:

Pending before the Court is the August 22, 2019 Report and Recommendation from United States Magistrate Judge Ona T. Wang (the “Report”), addressing Plaintiff Selvin Laboriel’s complaint for judicial review of the decision of the Commissioner of Social Security (the “Commissioner”) denying Laboriel’s application for Supplemental Security Income (“SSI”). Judge Wang recommends that the Commissioner’s motion for judgment on the pleadings be denied, Laboriel’s cross-motion for judgment on the pleadings be granted, and the case be remanded to the Commissioner for further proceedings.

The Court has examined the Report and notes that no party has objected within the fourteen-day period from its service, as provided by 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. For the reasons set forth below, the Court finds no error in the Report and adopts it in its entirety.

BACKGROUND

This summary draws its facts from the detailed recitation in the Report. (See Report 2-11). On February 26, 2015, Plaintiff filed an application for SSI, alleging that he had been disabled since January 1, 1996, due to bipolar disorder, learning disability, insomnia, and attention-deficit/hyperactivity disorder ("ADHD"). (*Id.* at 3). Plaintiff's application was denied on June 22, 2015. (*Id.*). He requested and was granted a hearing before Administrative Law Judge ("ALJ") David Suna, which was held on August 7, 2017. (*Id.*). On October 13, 2017, ALJ Suna issued a written opinion determining that Plaintiff was not disabled within the meaning of § 1614(a)(3)(A) of the Social Security Act, and was not entitled to SSI. (*Id.* at 3). On April 13, 2018, the Appeals Council denied Plaintiff's request for review. (*Id.*).

Plaintiff filed this action on June 12, 2018, seeking judicial review of the Commissioner's determination. (Dkt. #1). The Commissioner moved for judgment on the pleadings on November 13, 2018. (Dkt. #15, 16). Plaintiff filed a cross-motion for judgment on the pleadings on March 1, 2019. (Dkt. #21, 22). Judge Wang's Report was issued on August 22, 2019. (Dkt. #26). Objections were due on or before September 5, 2019. (*Id.*). Neither party has objected to the Report.

Judge Wang recommended that this Court grant Plaintiff's motion for judgment on the pleadings, deny the Commissioner's motion, and remand the matter to the Commissioner for further proceedings. (Report 26). Judge Wang found that ALJ Suna erred in failing to develop the record sufficiently as to

Plaintiff's testimony. (*Id.* at 17-18). Judge Wang recommended that the action be remanded to rectify that error, and also so that ALJ Suna could further analyze Dr. Upendra Bhatt's medical opinion. (*Id.* at 19-21).

DISCUSSION

A court may accept, reject, or modify, in whole or in part, the findings or recommendations made by a magistrate judge. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *Grassia v. Scully*, 892 F.2d 16, 19 (2d Cir. 1989). A court may also accept those portions of a report to which no specific, written objection is made, as long as the factual and legal bases supporting the findings are not clearly erroneous. See *Ramirez v. United States*, 898 F. Supp. 2d 659, 663 (S.D.N.Y. 2012) (citation omitted). A magistrate judge's decision is clearly erroneous only if the district court is "left with the definite and firm conviction that a mistake has been committed." *Easley v. Cromartie*, 532 U.S. 234, 242 (2001) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). "A party's failure to object to a report and recommendation, after receiving clear notice of the consequences of such a failure, operates as a waiver of the party's right both to object to the report and recommendation and to obtain appellate review." *Grady v. Conway*, No. 11 Civ. 7277 (KPF) (FM), 2015 WL 5008463, at *3 (S.D.N.Y. Aug. 24, 2015) (citing *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992)).

Because the Commissioner has not filed an objection, he has waived his right to object and to obtain appellate review. Even so, the Court has reviewed the Report and finds that its reasoning is sound and it is grounded in fact and

law. Accordingly, the Court finds no clear error and adopts the Report in its entirety.

CONCLUSION

The Court has thus reviewed the Report for clear error and finds none. The Court agrees completely with Judge Wang's thoughtful and well-reasoned Report and hereby adopts its reasoning by reference. Accordingly it is hereby ordered that Plaintiff's motion for judgment on the pleadings is GRANTED, and the case is REMANDED to the Commissioner for further proceedings consistent with the Report. Further, the Commissioner's motion for judgment on the pleadings is DENIED.

The Clerk of Court is directed to terminate the motions at docket entries 15 and 21 and close this case.

SO ORDERED.

Dated: September 9, 2019
New York, New York

A handwritten signature in blue ink, reading "Katherine Polk Faila".

KATHERINE POLK FAILLA
United States District Judge